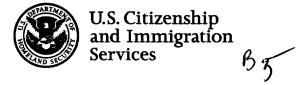
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## **PUBLIC COPY**



FILE:

EAC 03 266 55964

Office: VERMONT SERVICE CENTER

Date:

AUG 3 1 2006

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced

Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration

and Nationality Act, 8 U.S.C. § 1153(b)(2)

## ON BEHALF OF PETITIONER:



## **INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as the vice president of marketing at CoreOptics. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

- (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
  - (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
  - (B) Waiver of Job Offer.
    - (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work and its significance:

The beneficiary has made significant contributions to the field of optical communications and clearly presents a case superior to that of the petitioner in *New York State Department of Transportation*...

The proposed beneficiary's ongoing work and research is in providing the necessary optical components and equipment for the Department of Defense's Global Information Grid Bandwidth Expansion Project. . . . The project will allow the U.S. military to transmit more data [over] much longer distances with greater security. . . . As Vice President of Marketing [the petitioner] plays a crucial role in the deployment of mission critical equipment for project. manufactures optical transponders for use in optical line cards. Optical line cards function as the ingress and egress points on an optical network and are fundamental for the successful expansion of the existing communication network. project is currently in the Request for Proposal stage and eamed up with to develop a product optical transponders. [The petitioner] is the key contact offering that integrates and main technical liaison for the integration efforts. His knowledge of the optical technology market both from a business sense as well as a technical sense is essential to the successful partnership between

Counsel states that the petitioner "has obtained a series of letters from international experts in his field of specialization, attesting to his outstanding abilities. . . . These authors have prepared independent expert evaluations of [the petitioner's] accomplishments, contributions, and reputation for the purposes of this petition."

The letter contains unfinished, unsigned templates of three witness letters, along with signed, finished versions. For instance, one letter, to be signed by "Ario Biggatini," reads in part:

[To be placed on Cisco Stationary (sic)]

\* \* \*

individuals that I have encountered" is taken straight from the template. States, evidently in his own words, that the petitioner "has been very instrumental in defining the specification . . . in development of the tunable optical devices and open tolerant optical modules and systems for our next generation transport platform."

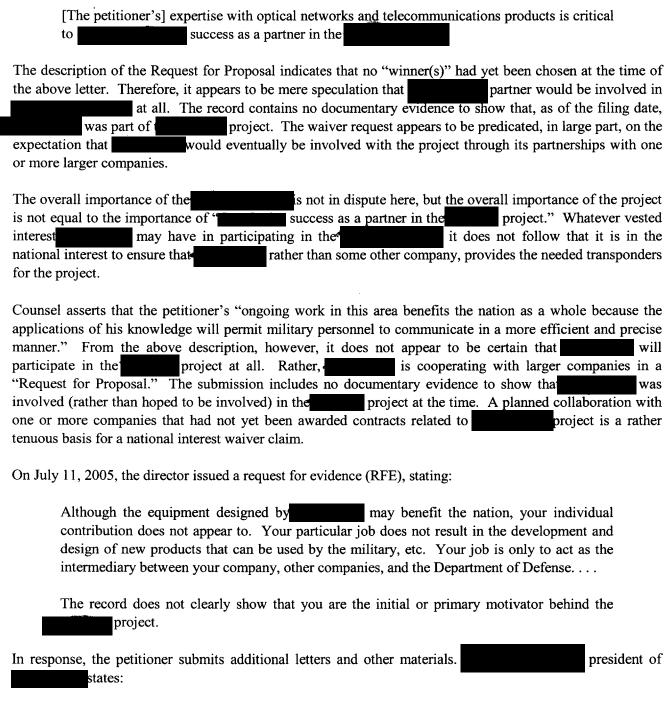
Ario Bigattini has added the most to his template letter, stating:

As [the petitioner] has pointed out in his publications on the topic of tolerant networks, the first important application of widely tunable lasers is inventory reduction and sparing. . . . The projected saving and economic impact for telecommunication industry will be in the hundreds of millions of dollars.

In his network studies, [the petitioner] further discovered that, while applications in inventory reduction will drive much of the initial demand for tunable lasers, the real revolution will come when they are applied to make optical networks more flexible, secure and tolerant. . . .

[The petitioner] has made significant contributions in promoting the state of the art of tunable laser technologies and system applications. . . . [The petitioner] has also made important contributions in the standardization of OIF (Optical Internetworking Forum) Small-Form-Factor Multi-Source Agreement common interface for tunable lasers, his idea such as Small Form Factor footprint, pluggable connector and pin out, etc., presented at an OIF meeting has been widely accepted and implemented in Tunable Laser Implementation Agreement (OIF2002.210.04) as the new industry standard.

the most detailed letter in the initial filling is from	managing director of
describes project and its goal of ens	suring that "the American military has the
pest communications available." describes	role in the project:
develops and manufactures modules and so	
networking solutions for the telecommunications and	the information technology industry.
current portfolio includes advanced 10 and	l 40 Giga bits per second transponders
for the Internet Protocol (IP) Routers as well as the	Metropolitan optical
transport systems.	
advanced transponder solutions will be inte	egrated into optical line cards of major
companies such as	
CoreOptics will play an important role in the	
At the present time, we have partnered with Cisco and I	
	our products will be included in the
	The petitioner] will play a critical role
in the integration of our product within the product suit	te offered by the winner(s) of the RFP.



[The petitioner] is a recognized national expert in the field of tunable optical lasers and networks and his role in the company combines his technical expertise with his business acumen, making him virtually irreplaceable. . . . His job responsibilities for CoreOptics include the following:

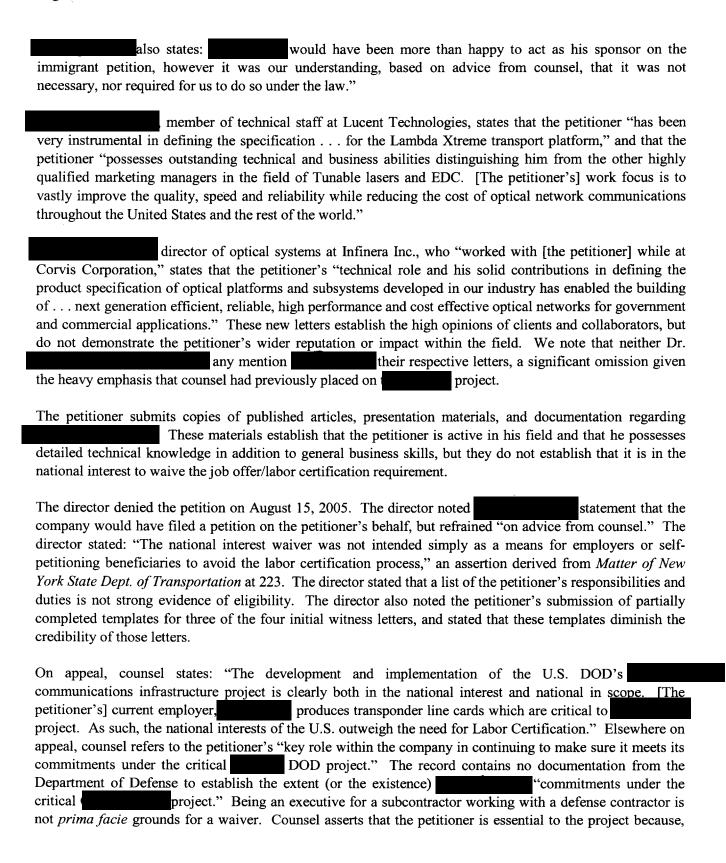
- --Definition of technical specification, marketing requirements and development of commercial specifications for CoreOptics product platforms for all Government and Commercial applications. . . .
- --Development and execution of CoreOptics North American product development and customer support strategies. . . .
- --Establishment of strategic technical and commercial alliance programs with major subsystems, components and system provider companies to deliver value-add services and products for optical networking applications
- --Establishment and leading of multi-disciplinary Sales and Marketing and Application Engineering organizations for CoreOptics product platforms
- --Development and execution [of] CoreOptics public, investor relations and branding initiatives via a nation-wide marketing campaign, public presentations and articles at trade shows and technology seminars. . . .

While [the petitioner's] expertise and contributions undoubtedly benefit CoreOptics greatly, CoreOptics is an important subcontractor for major US based telecommunications systems manufacturers that provide equipment for the GIG-BE and various DOD projects. [The petitioner] plays a major role in making sure that CoreOptics meets its contract obligations. . . . [The petitioner] has primary responsibility for making sure that both the interests of our customers' projects and the company are served.

Moreover, [the petitioner] has been very instrumental working with Lucent Technologies in defining the specifications for development of tunable optical devices for the Lambda Xtreme transport platform. . . . This Lucent flagship product is in wide deployment in the U.S. by many service providers. . . .

Products like the Lambda Xtreme transport platform help the U.S. to maintain a competitive infrastructure, without which the country could fall behind in offering sufficient capacity and high speed data transmission for government, education and business.

The overall importance of the telecommunications industry is not in dispute. It does not necessarily follow, however, that every marketing executive of every subcontractor in that industry qualifies for a national interest waiver. The above letter indicates that the position filled by the petitioner is important for the interests of CoreOptics and its clients, but it does not persuasively show that the industry would suffer or drop behind foreign competitors if someone other than the petitioner occupied that position.



among other reasons, he "is a Masters level engineer," an educational requirement that could be expressed on an application for a labor certification.

Counsel states that the director "improperly discounted letters . . . based on draft versions which were also submitted. CIS did not contact the authors. Also, there was no opportunity given to rebut the conclusion regarding the letters." The AAO has addressed this concern by considering the content of these letters that can reasonably be attributed to the individuals who signed them. The preliminary versions of the letters were not merely "draft versions" prepared by the signers; rather, it is obvious that they were templates prepared *for* the signers. This is clear because of the bracketed, bold-type instructions to insert specific personal information, and because none of the "draft versions" feature correct spellings of the witnesses' names. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to issue an RFE if required initial evidence is missing from the record, and 8 C.F.R. § 103.2(b)(16)(i) requires the director to advise the petitioner of derogatory evidence that is unknown to the petitioner. Neither of these regulations applies to the templates. Once a petitioner has submitted evidence, no regulation requires the director to warn the petitioner in advance of conclusions to be drawn from that evidence. The petitioner's opportunity "to rebut the conclusion" is the appeal itself, but the petitioner offers no such rebuttal; counsel merely protests the lack of an earlier opportunity to do so.

Counsel also states that the director "failed to address or discuss the evidence submitted in response to the RFE. Specifically, the denial failed to consider additional recommendation letters, and documentation of his technical presentations, seminars and documents authored." The AAO has addressed these additional letters. As for the technical documents, the director acknowledged the petitioner's technical expertise in his field, but asserted that such knowledge can be articulated on a labor certification and therefore is not a strong basis for a waiver.

We note that the petitioner is the beneficiary of a new petition, filed with an approved labor certification in March 2006. The new petition has been approved, with a priority date of October 2005 (based on the labor certification). Therefore, the petitioner, in this proceeding, seeks an exemption from a requirement that has now been met.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. This denial is without prejudice to ongoing adjustment proceedings resulting from the petition, with labor certification, recently approved on the alien's behalf.

**ORDER:** The appeal is dismissed.